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May 7, 1996

## VIA HAND DELIVERY

Mr. William Caton  
Acting Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**Re: Telefónica Larga Distancia de Puerto Rico, Inc.'s Reply  
Comments In The Matter Of Federal-State Joint Board  
On Universal Service (CC Docket No. 96-45)**

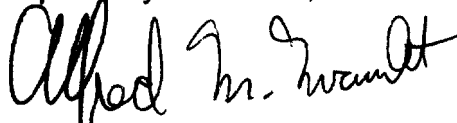
Dear Mr. Caton:

Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD"), by its attorneys, hereby submits for filing an original and six copies of their Reply Comments in connection with the above-captioned matter.

Also enclosed is an additional copy of TLD's Reply Comments which we ask you to date stamp and return with our messenger.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,



Alfred M. Mamlet  
Counsel for Telefónica Larga Distancia  
de Puerto Rico, Inc.

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Enclosures

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of )  
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Federal-State Joint Board on )  
Universal Service )  
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CC Docket No. 96-45

**TLD'S REPLY COMMENTS**

**TELEFÓNICA LARGA DISTANCIA  
DE PUERTO RICO, INC.**

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Dated: May 7, 1996

*Counsel for Telefónica Larga Distancia  
de Puerto Rico, Inc.*

## SUMMARY

Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD") addresses four points raised by the commenters in response to the Commission's Universal Service NPRM.<sup>1/</sup> **First**, commenters have expressed virtually unanimous support for the Commission's adoption of a revenues-based methodology for universal service contribution. Because a subscriber-line methodology ignores revenue differences among carriers, and imposes a disproportionate universal service burden on carriers that serve low-volume consumers, it has correctly been rejected by virtually all commenters as being inconsistent with the Telecommunications Act of 1996 ("the Act" or "the Telecommunications Act"). Further, commenters have recognized that a revenues-based methodology is easier to administer for the numerous carriers subject to universal service contribution because it does not require the implementation of cumbersome "equivalency ratios."

**Second**, no party in this proceeding has advanced a satisfactory justification for retaining the subscriber-line contribution methodology. Its few adherents have: (1) not suggested any advantage to retaining the subscriber-line methodology; (2) failed to address the discriminatory effect that the methodology has upon carriers serving low-volume consumers; and (3) typically ignored the LEC's legal obligation to contribute to universal service based upon interstate access charge revenue. LEC interstate access charge revenue should be assessed for universal service because the Telecommunications Act clearly requires every telecommunications carrier providing "interstate telecommunications services" to contribute. It is well settled that the provision of interstate access by a LEC is an interstate service subject to federal regulation.

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<sup>1/</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 96-93 (Mar. 8, 1996) ("Universal Service NPRM").

**Third**, most commenters support the adoption of a "net revenues" contribution methodology because: (1) it prevents double charging revenue for universal service; (2) it does not illegally exempt LEC access charge revenue from universal service contribution; and (3) it is an explicit contribution mechanism.

**Fourth**, TLD supports the comments which express a desire for the Commission to appoint a neutral entity to administer universal service. Whether the entity is governmental or nongovernmental, the Commission must ensure that the administering entity has no pecuniary interest or affiliation with any carrier contributing to, or collecting from, universal service programs. This minimal safeguard is essential to ensure an equitable and nondiscriminatory administration of universal service support.

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of )

Federal-State Joint Board on )  
Universal Service )

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CC Docket No. 96-45

**TLD'S REPLY COMMENTS**

**I. INTRODUCTION**

TLD's Reply Comments address four points raised by the commenters in response to the Commission's Universal Service NPRM.<sup>1/</sup> **First**, almost all commenters support the Commission's adoption of a revenues-based methodology for universal service contribution, as opposed to a subscriber-line method, because it is nondiscriminatory and easy to administer. **Second**, no commenter has put forth a satisfactory justification for retaining the subscriber-line contribution methodology.

**Third**, of the revenues-based contribution methodologies, most commenters support the adoption of a "net revenues" methodology. The Commission should reject the gross revenues methodology and the retail surcharge methodology because it double charges funds paid to another carrier, and illegally exempts LEC access charge revenue from universal service contribution.

**Fourth**, TLD supports the appointment of neutral entities to administer universal service programs. This safeguard will ensure that the programs are

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<sup>1/</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 96-93 (Mar. 8, 1996) ("Universal Service NPRM").

administered equitably and on a nondiscriminatory basis as required by the Telecommunications Act.

## **II. COMMENTERS ADVOCATE A REVENUES BASED CONTRIBUTION METHODOLOGY**

Commenters have almost unanimously advocated a revenues-based methodology over a subscriber-line methodology because: (1) it does not disproportionately affect carriers serving low-volume consumers; (2) it is easy to administer over the diverse array of carriers required to contribute to universal service under the Telecommunications Act of 1996 ("the Act" or "the Telecommunications Act"); and (3) there is no policy benefit for retaining the subscriber-line methodology.

### **A. Commenters Overwhelmingly Advocate A Revenues-Based Contribution Methodology Because It Is Nondiscriminatory And Easy To Administer**

Almost all commenters addressing the contribution methodology agree that universal service contribution should be based in some form on carrier revenues.<sup>2/</sup>

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<sup>2/</sup> See, e.g., AT&T Comments at 8 (Apr. 12, 1996) (advocating a surcharge on all retail telecommunications services because "it ensures that all subscribers make a fair and equitable contribution on exactly the same basis -- all retail revenues"); MCI Comments at 15 (Apr. 12, 1996) (methodology should be "based on their relative revenue shares"); LDDS WorldCom Comments at 18 (Apr. 12, 1996) (contributions should be based "on the gross retail revenues of a telecommunications provider net payments to other carriers"); LCI International Telecom Corp. Comments at 5 (Apr. 12, 1996) ("An acceptable alternative would involve a surcharge on all providers' retail revenue"); US West Comments at 18 (Apr. 12, 1996) (contribution method should "base assessments on the retail revenues of telecommunications providers"); Ameritech Comments at 23 (Apr. 12, 1996) (stating that "universal service support should be based on a uniform percentage of net revenues"); BellSouth Corporation and BellSouth Telecommunications, Inc. Comments at 15 (Apr. 12, 1996) (contributions "should be based on the revenues received from the provision of telecommunications services"); Pacific Telesis Group Comments at 21 (Apr. 12, 1996) (contributions "should be collected as a surcharge upon a provider's interstate revenues"); Comments of the United States Telephone Association at 24 (Apr. 12, 1996) ("Funding should be based on annual interstate telecommunications revenues associated with retail (i.e., end user) transactions"); TLD's Comments at 4 (Apr. 12, 1996).

Significantly, even the National Exchange Carrier Association ("NECA") -- the entity currently responsible for collecting and administering the Universal Service Fund -- stated that it "support[s] replacement of the current presubscribed lines-based allocation method with a system based on interstate revenues."<sup>3/</sup>

As TLD demonstrated in its Initial Comments, TLD's current universal service costs per revenue dollar are 252% greater than AT&T and 550% greater than other interexchange carriers.<sup>4/</sup> Under the subscriber-line methodology, TLD's Puerto Rican customers must shoulder a greater universal service burden than any other customers in the country despite having a per capita income that is less than one third of the national average.<sup>5/</sup> Clearly, the subscriber-line methodology is not an "equitable and non-discriminatory" mechanism as required by Section 254(d).

Numerous commenters agree that the subscriber-line contribution methodology is discriminatory because it imposes a heavier universal service burden on interexchange carriers serving low-volume users. For example, AT&T points out that "a line-based allocator discriminates against low-volume users."<sup>6/</sup> Similarly, Ameritech recognizes that "competitive neutrality problems would occur if the assessment is based on a per-line or per minute basis; for example, some carriers serve a higher percentage of lines but have a lower percentage of total revenue for all lines."<sup>7/</sup> The disproportionate universal service burden currently exists because the subscriber-line method ignores these critical revenue differences among carriers.

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<sup>3/</sup> NECA Comments at 17.

<sup>4/</sup> See TLD Comments at 5-8.

<sup>5/</sup> See TLD Comments at 7.

<sup>6/</sup> AT&T Comments at 11 n.13.

<sup>7/</sup> Ameritech Comments at 24. See also Personal Communications Industry Association Comments at 8-9 (Apr. 12, 1996) (stating that "basing fees on factors such  
(continued ... )

Imposing a heavier universal service burden on carriers that serve low-volume users is contrary to the Telecommunications Act because: (1) it is not an "equitable and nondiscriminatory" basis for assessing contributions to universal service;<sup>8/</sup> and (2) it creates an incentive for carriers to avoid serving low-volume consumers -- the very consumers the universal service program is intended to support.<sup>9/</sup> As AT&T demonstrates, "[r]eforming the USF/Lifeline allocator will benefit low-volume consumers by encouraging competition for their traffic."<sup>10/</sup> Applying a uniform revenues assessment would avoid discrimination among competing carriers, and would not discourage a carrier from serving low-volume consumers.

In addition, many commenters agree with the NPRM<sup>11/</sup> and TLD<sup>12/</sup> that a subscriber-line method would be difficult to administer under the new Telecommunications Act because it would require the implementation of "equivalency ratios," that would be inherently arbitrary and controversial. According to GTE:

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<sup>7/</sup> ( ... continued)

as the number of lines, trunks, or minutes of customer use might also discriminate against certain carriers. Such carriers might be subject to arbitrarily large universal service fees simply because their network design or customer calling patterns fell into certain patterns"); Southwestern Bell Comments at 19 ("[M]ethods that base contributions on per-line or per-minute units depend on the manner in which services are sold, and would create market distortions"); National Cable Television Association, Inc. Comments at 24 ("NCTA Comments") (stating that "per line or per minute charges can create economic distortions that can lead to inefficient outcomes"); TLD Comments at 5-8.

<sup>8/</sup> 47 U.S.C. § 254(d).

<sup>9/</sup> See TLD Comments at 7-8.

<sup>10/</sup> AT&T Comments at 11 n.13

<sup>11/</sup> The Commission recognized the potential problem with equivalency ratios when it stated that "these approaches may favor certain services or service providers over others." Universal Service NPRM at ¶ 124.

<sup>12/</sup> TLD Comments at 9.

Finally, as the NPRM (at ¶ 124) itself recognizes, it would be impossible to establish a contribution method based on demand units, such as minutes or lines, that was competitively and technologically neutral. Since carriers would provide service in different units, equivalency formulas would have to be applied; these would inevitably favor some carriers over another.<sup>13/</sup>

Similarly, the Florida Public Service Commission

agree[s] with the comments of the FCC in the NPRM that a uniform per line or per minute charge, which links the assessment mechanism to a specific rate structure, could be extremely cumbersome to implement.<sup>14/</sup>

The Telecommunications Act's requirement of a "nondiscriminatory" universal service contribution mechanism clearly prohibits employing a subscriber-line methodology unless there are equivalency ratios to prevent discrimination among various IXC's and between IXC's, LEL's, CMRS providers and other carriers. By contrast, a revenues-based contribution methodology does not require equivalency ratios because all carriers providing interstate services would simply need to contribute the same fixed percentage of their interstate revenues to universal service.

**B. No Commenter Has Offered Any Reasonable Justification For Retaining The Subscriber-Line Contribution Methodology**

Bell Atlantic is one of the few proponents of the subscriber-line methodology.<sup>15/</sup> Bell Atlantic's comments, however, do not justify the adoption of the subscriber-line methodology for three reasons. **First**, Bell Atlantic has not suggested any advantage to retaining the subscriber-line contribution methodology.

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<sup>13/</sup> GTE Comments at 18.

<sup>14/</sup> Florida Public Service Commission Comments at 25 (Apr. 11, 1996).

<sup>15/</sup> Bell Atlantic Comments at 14 (Apr. 12, 1996). See also Fred Williamson & Associates, Inc. Comments at 20 (expressing support for all three contribution methods proposed by the Commission, including the subscriber-line methodology).

**Second**, Bell Atlantic's comments do not address the discriminatory effect of the subscriber-line contribution methodology which disproportionately burdens carriers serving low-volume consumers in violation of the Telecommunications Act mandate for an "equitable and nondiscriminatory" contribution mechanism.<sup>16/</sup>

**Third**, Bell Atlantic apparently assumes that LECs will avoid universal service assessments for their interstate access services and will only be assessed as they offer interexchange services:

[M]any companies in addition to the incumbent interexchange carriers are likely soon to have large numbers of presubscribed lines and will each contribute significant amounts into the universal service fund. The burden of funding universal service will be spread over a larger number of contributors, and the incumbent IXC's share of the total fund payment will decline.<sup>17/</sup>

Bell Atlantic's suggestion that LECs will not have to contribute to universal service until they provide interstate services directly to end-users is contrary to the Telecommunications Act and Commission precedent. Under the Act:

**Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.**<sup>18/</sup>

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<sup>16/</sup> 47 U.S.C. § 254(d).

<sup>17/</sup> Bell Atlantic Comments at 14. Other commenters have joined Bell Atlantic in advocating that access fees not be assessed for universal service contribution. See Southwestern Bell Comments at 18; USTA Comments at 24; US West Comments at 29.

<sup>18/</sup> 47 U.S.C. § 254(d) (emphasis added).

According to Commission precedent, LECs' provision of local exchange access to interexchange carriers is an interstate telecommunications service.<sup>19/</sup>

Therefore, the Act clearly requires LECs to contribute to universal service. If presubscribed lines are used to calculate the universal contribution, then a LEC would have to contribute based upon their number of presubscribed lines for interstate access.

In short, there are virtually no adherents to retaining the subscriber-line methodology. The Commission should reject this approach because it discriminates against low-income users and would be difficult to administer with the expanded pool of contributions required by the Act.

### **III. THE COMMISSION SHOULD ADOPT A UNIVERSAL SERVICE CONTRIBUTION METHODOLOGY THAT USES A CARRIER'S REVENUES MINUS PAYMENTS TO OTHER CARRIERS**

Most commenters support the adoption of a contribution methodology that uses a carrier's revenues minus payments to other carriers or "net revenues," for three reasons. **First**, unlike a gross revenues methodology, a net revenues approach prevents double charging for universal service. **Second**, unlike a universal service retail surcharge, a net revenues methodology would not illegally exempt LEC access charge revenues from universal service assessment. **Third**, a net revenues approach is explicit.

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<sup>19/</sup> TLD Comments at 2-3. The Commission has explicitly held that access charges are interstate services. See, e.g., In the Matter of MTS and WATS Market Structure, 77 F.C.C.2d 224, 236 (1980) ("Inasmuch as we have decided to prescribe access charges in accordance with a formula that can be used to allocate any aggregate interstate exchange plant costs which may be determined under any Separations Manual formula, there is no reason to refer access charge questions to a joint board. The origination and termination of interstate or foreign communications is interstate or foreign service. This Commission has exclusive jurisdiction to regulate charges for such services").

**A. A Net Revenues Contribution Methodology Avoids Double Charging For Universal Service**

Of the different revenues-based contribution methodologies, a wide and diverse array of commenters, including interexchange carriers, LECs, resellers, wireless carriers, cable operators and users, have expressed support for a contribution method based upon a carrier's revenues minus payments to other carriers.<sup>20/</sup> These commenters recognize that a contribution methodology which allows a carrier to subtract out payments to other carriers is superior to a gross revenues approach because it avoids the problem of double charging revenue for universal service. For example, Ameritech has stated that:

Assessment based on gross revenues could result in a double tax burden on some services, such as an assessment on a LEC's access revenue and then another assessment on an IXC's gross revenue which includes

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<sup>20/</sup> See, e.g., MCI Comments at 16 (advocating collection of universal service "based on [a carrier's] relative revenue shares, net of payments to other carriers subject to the funding requirement"); Sprint Comments at 17 ("Contributions must be based on total revenues net of payments to intermediaries to ensure that vertically integrated companies are not advantaged relative to more specialized competitors"); Ameritech Comments at 23-24 ("The assessment for universal service support should be based on a uniform percentage of net revenues"); Comments of MFS Communications Company, Inc. at 23 (Apr. 12, 1996) (advocating a contribution method based on relative market share determined by "revenues net of payments to intermediaries"); Teleport Comments at 13; Western Wireless Comments at 16 ("[A]ssessment based upon a carrier's revenues net payment to other carriers would be the most competitively neutral funding mechanism."); Telecommunications Resellers Association at 6 (stating that, at a minimum, resellers should have their universal service contributions computed "on the basis of interstate revenues net of payments made to other carriers"); Western Association for Local Telecommunications Services Comments at 18; Ad Hoc Telecommunications Users Committee Comments at 21; General Services Administration Comments at 14 (recommending "contributions from all interstate carriers based upon their proportional share of all interstate revenues net of interstate payments to other carriers"); NCTA Comments at 24 ("Net, rather than gross, revenues from telecommunications services should be the basis for assessing contributions").

access charge expense, and that could violate the "equitable and nondiscriminatory" standard in the Act.<sup>21/</sup>

A net revenues approach would ensure that this problem did not occur. Indeed, as commenters pointed out, the Commission, in its Regulatory Fees proceeding, recognized the necessity of allowing carriers to subtract out payments to other carriers.<sup>22/</sup>

US West claims that allowing carriers to subtract out payments to other carriers is competitively unfair because LECs do not have payments to other carriers.<sup>23/</sup> According to US West, the Commission must impute access charges for LECs providing interstate interexchange service.<sup>24/</sup>

For example, under the revenues net payments method, an interexchange carrier that generates \$.15 per minute in interexchange revenues (\$.10 in interexchange revenues and \$.05 in revenues used to cover access charge expenses) is allowed to subtract out the \$.05 it pays for local exchange access in determining the base amount subject to assessment. US West claims that a LEC acting both as an interchange carrier, and as its own local exchange access provider should be able to similarly deduct its access charge expenses for providing toll services. That is, if the LEC generates \$.15 in interexchange revenues, it should be

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<sup>21/</sup> Ameritech Comments at 24. See also MCI Comments at 16 ("Netting out payments made to other providers of interstate services will avoid double-recovering from those services."); Teleport Comments at 13 (revenues net payments to other carriers "will avoid unnecessary and unfair double-counting of any carrier's revenue"); Telecommunications Resellers Association at 6; Ad Hoc Telecommunications Users Committee Comments at 21 (stating that a net revenue method "would result in each telecommunications dollar being 'taxed' only once").

<sup>22/</sup> See TLD Comments at 9-10; MFS Comments at 23; Western Wireless Comments at 16; Telecommunications Resellers Association Comments at 6; Ad Hoc Telecommunications Users Committee Comments at 22 n.31.

<sup>23/</sup> US West Comments at 18-19.

<sup>24/</sup> Id.

entitled to deduct \$.05 as imputed access fee expenses.<sup>25/</sup> However, the interstate access fees (imputed or not) must be assessed because it is an interstate service.

**B. A Retail Surcharge Contribution Methodology Would Illegally Exempt LEC Interstate Revenue From Universal Service Contribution**

Certain LECs have expressed support for a revenues-based contribution methodology that would require interexchange carrier's to place a retail surcharge on the end user's bill in order to collect for universal service.<sup>26/</sup> This contribution methodology would be illegal, self-serving, and discriminatory because it would exempt universal service assessment of interstate access fees revenue derived by LECs.

In advocating a retail surcharge, these LECs state that revenue derived from "wholesale" transactions, including LEC access charge revenue, should not be assessed for universal service contribution.<sup>27/</sup> This exemption, however, would be contrary to the Telecommunications Act which requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute"<sup>28/</sup> to universal service. The Commission has already determined that interstate access is an interstate service.<sup>29/</sup> A retail surcharge method would not

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<sup>25/</sup> Id. at 19 and Appendix B.

<sup>26/</sup> See, e.g., Southwestern Bell Comments at 18-19; Pacific Telesis at 21; USTA Comments at 24; NYNEX Comments at 24; US West Comments at 17-19.

<sup>27/</sup> See Southwestern Bell Comments at 18; USTA Comments at 24; US West Comments at 29. However, other LECs recognize that the statute requires that LEC access charge revenues may be assessed for universal service contributions. Ameritech Comments at 24.

<sup>28/</sup> 47 U.S.C. § 254(d) (emphasis added).

<sup>29/</sup> See, e.g., In the Matter of MTS and WATS Market Structure, 77 F.C.C.2d 224, 236 (1980) ("Inasmuch as we have decided to prescribe access charges in accordance with a formula that can be used to allocate any aggregate interstate exchange plant costs which may be determined under any Separations Manual formula, there is no reason to refer access charge questions to a joint board. The origination and

(continued ... )

encompass access charge revenue generated by a LEC because it would be assessed only on retail transactions, and not upon carriers involved in wholesale transactions as required by the Act.

Some LECs argue that assessing access charge revenue for universal service is undesirable because it "will cause the effective cost of access to be higher, which may induce purchasers of access to seek ways to avoid purchasing access services."<sup>30/</sup> This is not an adverse result, however, for two reasons. **First**, encouraging carriers to seek other methods of access will encourage competition with the LECs for access services. Competition will have the likely effect of driving access charges closer to cost thereby creating lower rates for consumers. **Second**, the other methods that would be used for interstate access services should also be assessed for universal service contributions. Assessing these alternative methods for universal service would ensure that the use of alternative methods of access would not unfairly decrease the amount of contributions going to universal service.

### **C. A Net Revenues Approach Is Explicit**

Commenters supporting a retail surcharge insist that one of its virtues is the "explicit" nature of the charge.<sup>31/</sup> The Telecommunications Act requires that universal service support mechanisms be explicit.<sup>32/</sup>

A net revenues approach, however, is no less explicit. Under a net revenues methodology, a uniform and fixed percentage of revenue is assessed upon all carriers

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<sup>29/</sup> ( ... continued)

termination of interstate or foreign communications is interstate or foreign service. This Commission has exclusive jurisdiction to regulate charges for such services").

<sup>30/</sup> See Southern Bell Comments at 19. See also GTE Comments at 17.

<sup>31/</sup> See US West Comments at 16; Southwestern Bell Comments at 19.

<sup>32/</sup> 47 U.S.C. § 254(e).

providing interstate services. This fixed percentage would be explicit since it would be known to all carriers providing interstate services.

#### **IV. UNIVERSAL SERVICE SHOULD BE COLLECTED AND DISTRIBUTED BY A NEUTRAL ADMINISTRATIVE BODY**

Numerous commenters have expressed strong support for the use of a neutral entity to collect and administer support for universal service. As LDDS WorldCom appropriately stated:

The Commission should take care to select an entity with absolutely no pecuniary or institutional interest in the universal service monies that it will collect and disburse, nor any special ties to one group/type of contributors or recipients.<sup>33/</sup>

TLD supports these comments advocating the use of a third-party entity that is not affiliated with any carrier to administer universal service. The Commission should specifically prohibit any governmental or nongovernmental body entrusted with administering universal service from having any affiliation or interest in a carrier contributing to or collecting from universal service. This minimum safeguard is necessary to ensure equitable and nondiscriminatory administration of universal service programs.

#### **V. CONCLUSION**

Based on the foregoing, the Commission should: (1) reject the subscriber-line universal service contribution methodology as being discriminatory and difficult to administer under the Telecommunications Act; (2) adopt a contribution methodology based upon a carrier's interstate revenues minus payments to other

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<sup>33/</sup> LDDS WorldCom Comments at 20. See also AT&T Comments at 22; Ameritech Comments at 24; Sprint Comments at 23; NCTA Comments at 25; Citizens Utilities Company Comments at 21.

carriers; and (3) ensure that the entity responsible for administering universal service is a neutral body that has no affiliation with or pecuniary interest in carriers contributing to and collecting from universal service.

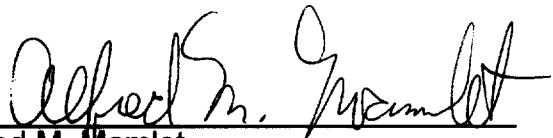
Dated: May 7, 1996

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I, Sandra R. Hammond-Murdico, do hereby certify that a copy of the foregoing **TLD's Reply Comments** has been sent, via first class mail, postage prepaid, (or as otherwise indicated) on this 7th day of May, 1996 to the following:

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